TITLE 86: REVENUE

PART 100
INCOME TAX

**Section 100.2330 Illinois Net Loss Carrybacks and Net Loss Carryovers for Losses Occurring On or After December 31, 1986**

a) IITA Section 207(a) provides for carryover deductions of any losses that result *after applying all of the modifications provided for in Section 203(b)(2), (c)(2) and (d)(2) and the allocation and apportionment provisions of Article 3 of* the *Act.*

b) Years to which Illinois net losses may be carried

1) Years to which Illinois net losses may be carried. Under IITA Section 207(a)(2), an Illinois net loss incurred in a tax year ending on or after December 31, 1999 and prior to December 31, 2003 may be carried back to the two preceding tax years or carried forward to the 20 succeeding tax years. Under IITA Section 207(a)(3), for any taxable year ending on or after December 31, 2003, the loss shall only be allowed as a carryover to each of the 12 taxable years following the taxable year of the loss. For tax years ending prior to December 31, 1999, IITA Section 207(a)(1) provides that a carryback or carryover deduction shall be allowed in the manner allowed under Section 172 of the Internal Revenue Code. The federal rules concerning the years to which a loss may be carried are contained in Section 172(b) of the Code and in Treas. Reg. Sec. 1.172-4(a)(1). These rules, as now in effect or hereafter amended, shall be followed for Illinois income tax purposes and shall apply to corporations, partnerships, trusts and estates. In general, for Illinois net losses incurred in tax years beginning prior to August 6, 1997, the net loss shall be carried back to the three preceding taxable years and shall be carried over to the 15 succeeding taxable years. For Illinois net losses incurred in tax years beginning on or after August 6, 1997 and ending prior to December 31, 1999, the loss may generally be carried back to the two preceding tax years and carried forward to the 20 succeeding tax years. In taxable years ending prior to December 31, 1999, special provisions applied to regulated transportation companies, financial institutions, product liability losses and other entities or situations, and the provisions in Section 172(b) of the Internal Revenue Code and the related Treasury Regulations relating to the years to which a loss incurred in one of those years may be carried shall be followed.

2) Specific rules for losses incurred in taxable years ending prior to December 31, 1999. IITA Section 207(a)(1) provides that, *for any taxable year ending prior to December 31, 1999, such loss shall be allowed as a carryover or carryback*

*deduction in the manner allowed under Section 172 of the Internal Revenue Code.* Pursuant to this provision:

A) For losses incurred in taxable years beginning prior to August 6, 1997, a loss generally would be carried back to each of the 3 taxable years preceding the taxable year in which the loss was incurred and to each of the 15 taxable years following the taxable year in which the loss was incurred. (From Section 172(b)(1)(A) of the Internal Revenue Code, as in effect prior to enactment of Public Law 105-34.)

B) For losses incurred in taxable years beginning after August 5, 1997, a loss generally would be carried back to each of the 2 taxable years preceding the taxable year in which the loss was incurred and to each of the 20 taxable years following the taxable year in which the loss was incurred. (From Section 172(b)(1)(A) of the Internal Revenue Code, as in effect after enactment of Public Law 105-34.)

C) Special carryover periods allowed under Section 172(b) of the Internal Revenue Code for specific kinds of losses or taxpayers also apply. For example:

i) "Specified liability losses" may be carried back to each of the 10 taxable years preceding the taxable year in which the loss was incurred. (From Section 172(b)(1)(C) of the Internal Revenue Code.)

ii) For losses incurred in taxable years beginning after December 31, 1986, and ending before January 1, 1994, bad debt losses of commercial banks may be carried back to each of the 10 taxable years preceding the taxable year in which the loss was incurred and to each of the 5 taxable years following the taxable year in which the loss was incurred. (From Section 172(b)(1)(D) of the Internal Revenue Code.)

c) Election to forgo carryback period

1) For losses incurred in tax years ending prior to December 31, 2003, IITA Section 207(a-5)(A) allows the taxpayer to *elect to relinquish the entire carryback period with respect to such loss.* Such election shall be made on the taxpayer's return for the taxable year in which the loss is incurred and shall be made by the due date (including extensions of time) for filing of such return. If an election is made, the loss may be carried forward and deducted only in years subsequent to the taxable year in which the loss was incurred. *Such election, once made, shall be irrevocable.*

2) If such election is made on any return which is filed in accordance with Section 502(e) of the Illinois Income Tax Act, the election will be considered to be in effect for all eligible members of the return for the taxable year for which such election is made.

3) If the timely return for the taxable year reflects Illinois income and:

A) a finalized federal change eliminates Illinois income thereby creating an Illinois net loss for the year, the taxpayer may make the election to relinquish the entire carryback period for the Illinois net loss on an amended return or form prescribed by the Department within the 120 day time period prescribed by Section 506(b) of the Illinois Income Tax Act, or

B) an Illinois audit or other Illinois change eliminates Illinois income thereby creating an Illinois net loss for the year, the taxpayer may make the election to relinquish the entire carryback period for the Illinois net loss on forms prescribed by the Department at the time the loss is first reported to Illinois.

d) Portion of Illinois net loss which is a carryback or a carryover to the taxable year in issue. Pursuant to IITA Section 207(a-5)(B), *the entire amount of such loss shall be carried to the earliest taxable year to which such loss may be carried. The amount of such loss, which shall be carried to each of the other taxable years, shall be the excess, if any, of the amount of such loss over the sum of the deductions for carryback or carryover of such loss allowable for each of the prior taxable years to which such loss may be carried.* This is illustrated in the following Example.

EXAMPLE: A taxpayer that makes its return on the calendar year basis has an Illinois net loss for 1986. Under the provisions of Section 172(b) of the Internal Revenue Code as in effect in that year, the entire net loss for 1986 may be carried back to 1983. The amount of the carryback to 1984 is the excess of the 1986 loss over the net income for 1983. The amount of the carryback to 1985 is the excess of the 1986 loss over the aggregate of the net incomes for 1983 and 1984. The amount of the carryover to 1987 is the excess of the 1986 loss over the aggregate of the net incomes for 1983, 1984, and 1985, etc.

e) Carryover of pre-12/31/86 loss and post-12/30/86 loss. Net operating losses incurred prior to December 31, 1986, can be carried over into years in which Illinois net losses (incurred on or after December 31, 1986) are also carried. In such cases, the former losses will be treated as an adjustment to taxable income (i.e., before apportionment) while the latter will be a deduction in computing Illinois net income (i.e., after apportionment). This is illustrated in the following Example.

EXAMPLE: Corporation A is a calendar year taxpayer. It has no partnership income and no nonbusiness income. In 1985, it reported a federal net operating loss of $1000, and on its Illinois return for 1986, it reported an Illinois net loss of $50, neither of which could be carried back to prior years due to losses existing in those years. In 1987, A had federal taxable income (before special deductions) of $200, and Illinois addition modifications of $100. Corporation A would compute its Illinois net income in 1987 as follows: The $1000 net operating loss from 1985 would offset the $200 of 1987 federal taxable income and would offset the $100 of 1987 Illinois addition modifications. In 1988, Corporation A would have remaining $700 of net operating loss carryover from 1985 and $50 of Illinois net loss carryover from 1986.

f) Special rules

1) IITA Section 207(b) provides that *any loss determined under subsection (a) of this Section must be carried back or carried forward in the same manner for purposes* of both the regular income tax imposed by IITA Section 201(a) and (b) and the personal property replacement income tax imposed under IITA Section 201(c) and (d).

2) For the carryforward of losses incurred prior to certain corporate or partnership reorganizations or acquisitions, see IITA Section 405.

3) IITA Section 207(a) provides that losses that may be carried over and deducted in other years are those losses that result after the modifications of IITA Section 203(b)(2), (c)(2) and (d)(2) are made, and after the allocation and apportionment rules of IITA Article 3 are applied. Accordingly:

   A) No exemption allowed under IITA Section 204 shall be taken into account in computing a loss that may be carried over and deducted under IITA Section 207; and

   B) No deduction for any loss carried over pursuant to IITA Section 207 may be taken into account in computing a loss that may be carried to and deducted in another taxable year under IITA Section 207.

4) Subchapter S corporations and partnerships

   A) IITA Section 207(a) allows the carryover of losses that result after the modifications of IITA Section 203(b)(2) and (d)(2) are made. IITA Section 203(b) applies to Subchapter S corporations and IITA Section 203(d) applies to partnerships. Accordingly, IITA Section 207 allows Subchapter S corporations and partnerships carryover deductions for losses incurred.

   B) Neither IITA Section 207 nor Section 172 of the Internal Revenue Code distinguishes between Subchapter S corporations and corporations governed by Subchapter C of the Internal Revenue Code. Section 1363(b)(2) of the Internal Revenue Code provides that no net operating deduction allowable under Section 172 of the Internal Revenue Code shall be allowed in the computation of taxable income of a Subchapter S corporation and Section 1371(b) of the Internal Revenue Code prohibits any carryforward or carryback between a taxable year in which a corporation is a Subchapter S corporation and a taxable year in which it is not. Neither Section 1363 nor Section 1371 of the Internal Revenue Code is applicable to the carryover and deduction of losses under IITA Section 207. Accordingly, subject to the other provisions of this Section, a loss incurred in a taxable year in which a corporation is a Subchapter S corporation shall be carried to and deducted in any taxable year in which it is not a Subchapter S corporation in the same manner as if the corporation were a Subchapter S corporation in that year, and a loss incurred in a taxable year in which a corporation is not a Subchapter S corporation shall likewise be carried to and deducted in any taxable year in which it is a Subchapter S corporation.

EXAMPLE: X Corporation is a Subchapter S corporation throughout the calendar year 1998. Effective for 1999, X Corporation's Subchapter S election is terminated. In 2000, X Corporation incurs an Illinois loss. Unless X Corporation elects to carry the loss forward only, the loss must first be carried back and deducted in 1998 and only the amount of loss in excess of 1998 taxable income may be carried to 1999 and subsequent years.

C) Losses carried over pursuant to IITA Section 207 are deductible only under that Section, and that Section allows the deduction only of losses that result when the taxpayer's own taxable income is less than zero. Accordingly, no loss carried over and deducted by a partnership or Subchapter S corporation in a taxable year may reduce the taxable income of any partner or shareholder of the taxpayer in that taxable year.

(Source: Amended at 29 Ill. Reg. 20516, effective December 2, 2005)